

file
DJAG/15418/71-7/BACR

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Office of:

The Deputy Judge Advocate General,
(B.A.O.R., B.T.A. and BETFOR),
c/o Headquarters,
British Army of the Rhine,
BACR 1.

Swearnt

25th July 1949

Military Governor and
Commander-in-Chief,
British Zone,
Germany.

Military Court (War Crimes) Trial
ESSEN WEST Case
Karl Kaufer

With reference to your MC/5501/C-in-C dated 12th July 1949
forwarding a letter from a Dr. Knott to Cardinal Frings regarding an
appeal on behalf of the above named war criminal.

The appellant was tried by a British Military Court at Essen
on 23rd December 1945, together with five others, upon a charge
alleging that he was, with them and with other persons unknown, concerned
in the killing of three British airmen near Essen on 13th December 1944
contrary to the laws and usages of war. He was convicted and sentenced
to imprisonment for life.

He now appeals against his conviction and there are attached to
his appeal a number of statements made by persons not called to give
any evidence at the trial. I do not think that much weight can be given
to the statements of eye-witnesses obtained five years after the event
whose testimony has not been subjected to the searching test of cross-
examination and it is for other reasons that I have come to the
conclusion that the conviction of Kaufer should not be allowed to stand.

As I did not personally review this case before confirmation
I have not relied on the advice given before confirmation by another
Deputy Judge Advocate General, but have obtained the proceedings from
the Judge Advocate General and considered them together with Dr. Knott's
submission on behalf of the appellant.

The appellant's conviction appears to rest solely upon the
evidence of two witnesses and the affidavit of a man named HARMANN.

The first of these, Fritz Conradshaus, was a most unsatisfactory
witness. After swearing in his evidence in chief that he had not
seen KAUFER near the scene of the crime he was treated by the prosecutor,
with the permission of the court, as a hostile witness and he then agreed
that in a previous statement he had said that he saw the appellant taking
part in the fighting on the bridge and heard him say "Shoot the dogs who
killed our wives and children". Nevertheless, no one else present
seems to have heard those words spoken by the appellant and as there were
over a hundred persons present screaming and shouting, the evidence of
CONRADSHAUSS should have been treated with great caution.

The second and only other witness who testified that the
appellant was present at the scene of the crime was the sixteen year old

/daughter

daughter of CONRADSHAUS, but it was elicited in cross-examination that this girl's evidence, insofar as it implicated the appellant was entirely hearsay being what her father had told her.

No other witnesses testified to any active part being taken by the appellant in the fatal assault on the airmen. No other witnesses even testified to having seen him at the scene of the crime, though this he and his wife both admitted in their evidence but stated that they were only two of a hundred spectators who took no part in the assault. Many other eye-witnesses of the assault who identified other accused as taking active parts did not even notice the presence of the appellant.

The only other evidence implicating the appellant, if such it can be called, was contained in an affidavit produced at the trial which was made by a person called HARTMANN who was not called as a witness. In this affidavit HARTMANN stated "I have not seen it myself because I was on the side of the bridge where the first one was thrown down but people tell and told that a man named KAUFER has taken an active part".

In my opinion no reasonable court should have convicted the appellant upon such flimsy material and in any event the finding of guilty in his case should, in my opinion, never have been confirmed.

My advice is that the appeal be allowed and the conviction quashed.

Brigadier,
(RUSSELL OF LIVERPOOL),
DJAG.

RofL/JBB